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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.456 OF 2004

Chandra @ Hanshu Narayandas Kharwani ... Petitioner

Vs.

Shri Dharmu Kishanchand Savlani ... Respondent

Mr. M.S. Karnik for the petitioner.

Ms. Leena Patil for the respondent.

CORAM: ABHAY S. OKA, J.

DATED: 8TH DECEMBER, 2004.

P.C.:-

1. Heard the learned counsel appearing for the parties.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 15/11/2003 passed by the learned trial judge. By the said order, the learned trial judge rejected the application made by the petitioner-defendant for setting aside the order directing that the suit will proceed without written statement. The order impugned has been passed on the ground that the trial court was powerless to grand extension of time to file written statement after expiry of the period provided under Rule 1 of Order VIII of the Code of Civil Procedure, 1908 (as amended w.e.f. 1/7/2002).

3. Now the law on this point is very clear. As held by the Division Bench of this court, the trial court can always extend time for filing the written statement beyond the statutory period of 90 days on special or exceptional grounds.

4. Mr. Karnik, the learned counsel appearing for the petitioner invited my attention to the averments made in paragraph 5 of the application. The said averments show that the petitioner is suffering from heart decease and she is also an asthma patient. It is claimed that the petitioner is poor and illiterate and she was in a helpless position and, therefore, she could not file the written statement within the stipulated time.

5. Ms. Patil, the learned counsel for the respondent strongly opposed the petition and contended that there is neither any special nor any exceptional circumstance to extend the time for filing the written statement.

6. I have considered the rival submissions. In view of the averments made in paragraph 5 of the application, in my view, it is a fit case for extension of time for filing written statement.

7. The application made by the petitioner discloses that the written statement was tendered along with the said application. Hence, I pass the following order.

O R D E R

(i) The impugned order dated 15/11/2003 is quashed and set aside.

(ii) The petitioner is allowed to file her written statement, if not filed earlier, within a period of four weeks from today.

(iii) Rule is made absolute in the above terms with no order as to costs.

(iv) All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

(ABHAY S. OKA, J.)